

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1296 of 1996

with

CIVIL REVISION APPLICATION No 1396 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

CHIMANLAL BHAGWANDAS PANCHAL

Versus

RAGHAVJI PARMAR-DHULI RAGHAVJIPARMAR THRO'TRIKAMBHAI & 4 ORS

Appearance:

1. Civil Revision Application No. 1296 of 1996
MR YATIN SONI for Petitioner
2. Civil Revision ApplicationNo 1396 of 1996
MR YATIN SONI for Petitioner

CORAM : MR.JUSTICE J.N.BHATT

Date of decision: 10/09/96

ORAL JUDGEMENT

These two Revision Applications arise out of common judgment and order recorded by the Appellate Bench of the Small Causes Court, Ahmedabad, in Civil Appeal no.25/1991 and Civil Appeal no.36/1991 whereby the Appellate Bench allowed Civil Appeal no.25/91 wherein the

judgment and decree recorded by the trial Court in H.R.P. Suit no.1148/1982 was set aside and dismissed Civil Appeal no.36/1991 filed by the present petitioner by invoking the provisions of Section 29 subsection (2) of the Bombay Rents, Hotel & Lodging House Rates (Control) Act,1947 (" Rent Act"). Since both these Revision Petitions arise out of one common order and raise identical questions between the same parties, they are being disposed of by this common judgment.

Respondents are the original plaintiffs-landlords who instituted H.R.P Suit no.1148/1982 for possession on the ground of non payment of rent against the petitioner original defendant-tenant in respect of the demised premises bearing M.C. no.499/13/1 and 499/14 situated in Amraiwadi, Ahmedabad. The premises were let to the petitioner at a monthly rent of Rs.170/- inclusive of taxes for the purpose of business. The respondents inter alia contended that the petitioner was in arrears of rent for more than six months at the time of service of notice and he was liable to be evicted on the ground of non payment of rent. Therefore, the aforesaid suit was filed.

The petitioner inter alia contended in his written statement exh.10 that the agreed rent of Rs.170/-per month was excessive. Therefore, request for fixation of standard rent was made. According to the case of the petitioner, the brother of the original plaintiff no.2 was paid the rent after the service of notice. Thus, it was contended by the petitioner that he was not in arrears of rent. In view of the facts and circumstances and the pleadings of the parties, the issues came to be settled at exh.38. The trial Court on appreciation of the facts and circumstances reached to the conclusion that there was no case for eviction as tenant was not in arrears of rent. Therefore, suit came to be dismissed for possession. Trial Court fixed the standard rent at the rate of Rs.125/-per month against the agreed rent of Rs.170/-per month in respect of the demised premises.

Being aggrieved by and dissatisfied with the said judgment and decree recorded by the trial Court, the respondents herein-original plaintiffs have filed Civil Appeal no.25/1991 and the petitioner filed Civil Appeal no.36/1991 against the order of standard rent. Aforesaid both the appeals came to be decided by common judgment by the Appellate Bench wherein the finding of the trial Court with regard to possession of the demised premises came to be reversed with the result that the appeal no.21/1996 was allowed and the judgment and decree recorded by the trial Court in H.R.P.Suit no.1148/1982

was quashed and set aside. The Appellate Bench also fixed the Standard Rent of the demised premises at Rs.170/-per month inclusive of taxes and education cess. The Civil Appeal no.36/1991 filed by the tenant came to be dismissed by the Appellate Bench by a common judgment passed on 29th July, 1996.

The petitioner-original tenant-defendant has filed C.R.A. no.1296/1996 against the decision recorded in Civil Appeal no.25/1991 whereas Civil Revision Application no.1396/1996 is filed against the dismissal of Civil Appeal no.36/1991. Learned Advocate Mr. Soni while appearing for the petitioner in both the petitions seriously criticized the passing of ejectment decree by the Appellate Bench on the ground of non payment of rent. He has also contended that the standard rent fixed by the trial Court at the rate of Rs.125/-per month should not have been disturbed by the Appellate Bench in absence of other evidence. Thus, the decree of ejectment recorded by the Appellate Bench is criticized and it is submitted that it is illegal and arbitrary. Following facts are no longer in controversy which may be articulated at the outset so as to appreciate the merits of the Revision Application.

- (i) Notice under Section 12(2) for demand of rent dated 6-8-1981 was served on the tenant wherein the rent was demanded from 1-12-1977 to July, 1981. Thus, the rent demanded in the notice under Section 12(2) was Rs.7480/-.
- (ii) No reply to notice was given.
- (iii) No dispute of standard rent was raised within one month.
- (iv) In so far as the dispute of standard rent was concerned , it was submitted that the dispute was raised in the written statement and earlier an application for fixation of standard rent filed by the tenant came to be dismissed for default on 10-3-75 which was not got restored.

Therefore it was submitted that the dispute of standard rent was in existence at the time of service of notice. It was not disputed that the earlier application for fixation of standard rent under Section 11(3) of the Bombay Rent Act is not got restored. No reasonable explanation is tendered by the petitioner original defendant-tenant as to why it was not got restored. It

is a settled proposition of law that once application for fixation of standard rent is filed and if it is got dismissed for default subsequent application or second application for fixation of standard rent could be filed, but it cannot be considered for the purpose of examining the readiness and willingness on the part of the tenant in so far as the question of non payment of rent is concerned. With the result, once an application for fixation of standard rent is dismissed for default which is not restored, it cannot be said that there was a dispute in existence about the standard rent at the time of service of notice. Since no standard rent came to be fixed on merits in the earlier petition, the tenant cannot be precluded from agitating the question of fixation of standard rent, however, at the same time, he cannot be allowed to raise the contention that for the purpose of non payment of rent the dispute of standard rent existed. In other words, the tenant is not entitled to contend that the dispute of standard rent existed even when his earlier application for fixation of standard rent came to be dismissed for default on 10-3-75 which is admittedly not got restored. In the circumstances, the view taken by the Appellate Bench that there was no existing dispute of standard rent at the time of service of notice or within one month thereafter cannot be said to be illegal, perverse and unjust.

In order to earn a decree for ejectment on the ground of Section 12(3)(a) of the Bombay Rent Act, following conditions are required to be established:

- (1) That rent is payable by the month.
- (2) Amount of standard rent and permitted increases is not disputed.
- (3) Standard rent or permitted increases are unpaid for more than six months.
- (4) Tenant received a notice of demand of rent under Section 12(2) of the Bombay Rent Act.
- (5) The tenant has neglected to pay the amount of standard rent and permitted increases for such a period within a period of one month after the receipt of the said notice under Section 12(2).

Having regard to the facts and circumstances emerging from the record of both the petitions and the copies of the evidence supplied by the learned Advocate for the petitioner, this Court has no hesitation that

aforesaid five conditions are fully satisfied leaving no scope of any doubt that the petitioner-original tenant-defendant was not ready and willing to pay the rent and he has incurred the liability for eviction on the ground of non payment of rent under Section 12(3)(a) of the Bombay Rent Act. The view taken by the Appellate Bench in this behalf is quite justified and this Court is fully satisfied that the view taken by the trial Court for dismissing the suit on the ground of non payment of rent was not justified. Grievance was raised by Mr. Soni for the petitioner with regard to fixation of standard rent at the rate of Rs.170/-per month. This finding of fact recorded by the Appellate Bench cannot be said to be unjust or perverse. Not only that, Appellate Bench has clearly observed that in the impugned judgment that there is no evidence led by the defendant-tenant to satisfy the Court that the agreed rent of Rs.170/-per month is in any way excessive. Mere denial of landlord in cross-examination that he did not know what was the rent of adjoining tenant since there were more than 150 tenants as per the evidence on record would not constitute a base for holding that agreed rent is excessive. Tenant has admittedly not led any evidence in support of his contention that the rent is excessive. No adjoining neighbour is examined. No valuer is examined. The trial Court recorded the finding that the value of the land can be inferred at Rs.400/-per square yard, and therefore, assuming this aspect reached to the valuation of the land and then fixed the standard rent at Rs.125/per month against the agreed rent of Rs.170/-per month. The approach of the learned trial Court Judge is not supportable and acceptable. The inference drawn by the trial Court in fixing the value of the land is not supported by the evidence on record. In the circumstances, the Appellate Bench was justified in reversing the order of fixation of standard rent at Rs.125/per month against the agreed rent of Rs.170/-per month. It was also contended that the factum of trial Court having fixed the standard rent at Rs.125/-per month should be construed as restoration of the original (first)application for fixation of standard rent. This submission is also without any substance and cannot be accepted.

Lastly, it was contended by learned Advocate Mr. Soni that the Appellate Bench has committed serious error in rejecting application to produce additional evidence during the pendency of the appeal. It appears that the petitioner gave an application under Order 41 Rule 27 of the Civil Procedure Code, 1908("Code") for leading additional evidence. The Appellate Bench has rightly

found that the application did not fall within the ambit and scope of O.41 R.27. The provisions of O.41 R.27 reads as under:

"O.41,R.27 (1) The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court. But if-

(a) the Court from whose decree the appeal is preferred has refused to admit evidence which ought to have been admitted, or

(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed or,

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause,

the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

It could very well be seen from the aforesaid provisions that it is incumbent upon the party to satisfy the Court that case falls in any one of the aforesaid clauses for permission to produce additional evidence during the pendency of the appeal. No such case was made out.

The view taken by the trial Court while rejecting the application under O.41 R.27 is quite justified as application made under O.41 R.27 did not fall within the ambit of the said provision. Therefore, the grievance raised in this behalf against the said finding is meritless. The Appellate Bench has given time to vacate the premises upto 30-9-1996. Having regard to the facts

and circumstances, it would be just and appropriate to extend the said time till the end of March,1997. In the circumstances, the execution and implementation of the impugned decree for possession is stayed till 30th March, 1997 provided the defendant-tenant files an undertaking with usual conditions inter alia incorporating the following conditions:

- (1) That he is in exclusive possession of the demised premises and that he shall handover peaceful and vacant possession thereof latest on 30th March, 1997.
- (2) He shall pay tender or deposit in Court the full arrears on or before 15th October,1996.
- (3) That he shall go on paying the rent at the rate of Rs.170/per month by way of mesne profits till the date of handing over the possession.

In view of the aforesaid facts and circumstances, both these Revision Applications are meritless, and therefore, they are dismissed at the threshold.

sf-jnb.